the trial court dismissed the petition on the ground that the opening statement did not show proof sufficient to support the allegation. The plaintiff appealed from the court's ruling. *Held,* when the counsel in the opening statement gives in detail all the evidence that he proposes to offer in support of the allegation in the petition and is given an opportunity to explain and qualify his statement, and it is apparent that the facts proposed to be shown would not sustain the petition, it is the duty of the trial court to sustain a motion for dismissal. *Cornell* v. *Morrison* (Ohio 1912), 100 N. E. 817.

The question raised in the principal case is one on which the courts are not agreed. For a discussion of the various rules on the proposition involved see 9 MICH. L. REV. 271.

WILLS—ESTATES TAIL.—Testator had five children, one of whom, named Mary, was married. In 1893 he devised a specific tract of land to Mary and the heirs of her body. Similar devises were made in favor of the other children. The will contained a residuary clause in which the testator gave to his children share and share alike, "all other property, goods, chattels, moneys, stocks, credits and effects" of which he might die seized. The testator died in 1895 leaving surviving him the five children. In 1909 Mary died without having children and was survived by her husband. The four children now surviving brought ejectment against Mary's husband. *Held,* that each of the children took an estate tail, and that Mary acquired by the residuary clause in the will an undivided fifth interest in the reversion in fee expectant on her death without issue, which interest on her death passed to her husband. *Ewing* v. *Nesbitt* (Kan. 1913), 129 Pac. 1131.

It is very rare to find a jurisdiction at the present time which recognizes the estate tail as it was known at the common law without some statutory modification. In some states the estate tail is converted into a fee simple, while in others the first taker gets a life estate. For a grouping of the states under the various statutory modifications see BREWSTER, CONVEYANCING, § 143. In 1855 by a statute of the Territory of Kansas the common law estate tail was converted into a life estate in the first taker. In 1859, however, the Territorial Legislature completely revised the act of 1855 and restored the estate tail with its characteristics as known at the common law. The opinion in the principal case is very interesting because of its accurate review of the nature and origin of estates tail and their introduction into this country. The court pointed out that such estates were in harmony with the wants and conditions of the people of Kansas, and that the danger of a perpetuity was prevented by the donee in tail giving a deed of the land which barred the remainderman, just as a fine or a common recovery at the common law had a similar effect, by converting the estate tail into a fee simple absolute. Therefore, if the testator's daughter Mary in the principal case had chosen in her lifetime to make a conveyance of the land devised to her, she would thereby have barred herself, her issue, and her father's reversion.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION. — One Lloyd was charged with conspiracy to cheat and defraud certain insurance companies. Defendant moved to quash the information upon the ground that he had

been compelled in an examination before the State Fire Marshal to be a witness against himself contrary to the fifth amendment of the Federal constitution and to a similar provision in the State constitution, and that the complaint and information were founded principally upon the testimony drawn from the accused at the examination. On the hearing of the motion the District Attorney made a statement to the effect that the complaint was predicated upon the testimony of defendant as well as upon other testimony. The lower court granted the motion to quash, but upon appeal it was *held* that this ruling of the lower court was erroneous. *State* v. *Lloyd et al* (Wis-1913), 139 N. W. 514.

The objection based on the Federal amendment was briefly disposed of by reason of its inapplicability to prosecutions in state courts, and attention was entirely devoted to the state provision conferring a similar privilege. It did not clearly develop that the privilege of the defendant had been actually infringed upon in the prior examination since he failed to assert the privilege and there was no appearance of any coercion in drawing forth the incriminating evidence, but the Wisconsin court while assuming that the privilege had been invaded further declared that it should not be so far extended as to have the effect of invalidating an information and barring a conviction upon *other* evidence though the information was in fact grounded in part on evidence unlawfully elicited and in part on such other and proper evidence. The general question here involved has been extensively treated by Professor WIGMORE in his work on Evidence, §§ 2250-2282. In speaking of this privilege as derived from clauses in various state constitutions the author makes the following summary: "The protection, under all clauses, extends to all manner of proceedings in which testimony is to be taken, whether litigious or not, and whether ex parte or otherwise; it therefore applies in all kinds of courts, in all methods of interrogation before a court, in investigations by a grand jury, and in investigations by a legislature or a body having legislative functions." The further question, however, as to whether an information or indictment should be quashed because of a violation of the privilege upon a prior examination or upon an investigation before the grand jury is separate and distinct from the usual problems surrounding the exercise of the privilege. A very carefully considered case arose in Michigan in many respects analagous in principle to the main case. The court there held, on a plea in abatement to an indictment, that the latter should not be quashed when founded in part on proper and competent testimony and in part on evidence unlawfully elicited. *People* v. *Lauder,* 82 Mich. 109. See also *Boone* v. *People,* 148 Ill. 440.